

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Lower Passaic Study Area portion of the
Diamond Alkali Superfund Site

In and About Essex, Hudson, Bergen
and Passaic Counties, New Jersey

Alliance Chemical, Inc., et al.,

Settling Parties.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY
STUDY

U.S. EPA Region 2
CERCLA Docket No. 02-2007-2009

Amendment No. 2

Proceeding Under Sections 104, 107 and
122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9604, 9607 and
9622

I. JURISDICTION AND GENERAL PROVISIONS

1. The Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”), CERCLA Docket No. 02-2007-2009, was entered into by the United States Environmental Protection Agency (“EPA”) and the respondents whose names are set forth in Appendix A thereto (“Settling Parties”). The Settlement Agreement was fully executed and became effective on May 8, 2007. The Settlement Agreement concerns the completion of a remedial investigation and feasibility study (“RI/FS”) for the Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site (“Site”) initiated by EPA and the reimbursement for future response costs incurred by EPA in connection with the RI/FS, as provided therein.

2. The Settlement Agreement was issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. §§ 9604, 9607 and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegations Nos. 14-14-C and 14-14-D. This authority was redelegated by the Regional Administrator of EPA Region II to the Director of the Emergency and Remedial Response Division by EPA Regional Delegations 14-14-C and 14-14-D dated November 23, 2004.

3. Effective May 21, 2009, the Settlement Agreement was amended to provide for a prepayment of Future Response Costs, as defined in the Settlement Agreement, and to eliminate the name of a party that had withdrawn from the AOC from those identified on the Appendix A.

4. Subsequent to that time, EPA and the Settling Parties have identified additional parties that have de facto withdrawn from the AOC as result of their bankruptcy proceedings, and additional parties that have joined with the Settling Parties to carry out the activities required by the Settlement Agreement.

5. Paragraph 7 of the Settlement Agreement provides that the Settlement Agreement may be amended, upon mutually acceptable terms and conditions, to include additional parties who elected to become Settling Parties after the Settlement Agreement became effective.

6. Paragraph 106 of the Settlement Agreement provides that the Settlement Agreement may be amended by mutual agreement of EPA and Settling Parties, and that amendments shall be in writing and shall be effective when signed by EPA.

7. EPA and the Settling Parties have agreed to amend the Settlement Agreement to add the names of parties that have joined with the Settling Parties to carry out the activities required by the Settlement Agreement, such that these added parties are fully subject to all the obligations and protections of the Settlement Agreement.

8. EPA and the Settling Parties have agreed that the parties that formerly were Settling Parties, but that have de facto withdrawn from the AOC as a result of their bankruptcy proceedings, will be removed from the AOC.

The terms and conditions remaining fully in effect and not being altered in any way, EPA and the Settling Parties hereby agree to amend the Settlement Agreement as follows:

II AMENDMENT

9. Appendix A and Appendix A-1 to the Settlement Agreement are hereby amended to add as Settling Parties the following:

- Coats & Clark, Inc.
- Cooper Industries, LLC
- DII Industries, LLC
- Essex County Improvement Authority, as indemnitor to Celanese Ltd. for former Celanese Ltd. operations located on or about 354 Doremus Av., Newark, NJ
- STWB Inc.

10. Appendix A, Appendix A-1 and Appendix A-2 to the Settlement Agreement are hereby amended to remove the following parties that have de facto withdrawn from the AOC as a result of their bankruptcy proceedings:

- Chemtura Corporation
- General Motors Corporation
- Hercules Chemical Company, Inc.
- Millennium Chemicals, Inc. affiliated entities MHC, Inc. (on behalf of itself and Walter Kidde & Company, Inc.), Millennium Petrochemicals, Inc. (f/k/a Quantum Chemical Corporation) and -Equistar Chemicals LP
- NPEC Inc.
- Reichhold, Inc.

11. Removal of the parties identified in paragraph 10 above shall be without prejudice or impact on any proof of claim filed in such bankruptcy proceedings by EPA and/or the Settling Parties nor shall such removal be deemed a waiver of any rights EPA and/or the Settling Parties may have with respect to any bankruptcy filing by any Settling Party from and after the date hereof.

III. EFFECTIVE DATE

This Amendment No. 2 to the Settlement Agreement shall be effective on the day that it is signed by the Director of the Emergency and Remedial Response Division of EPA, Region 2 or his delegate.

It is so ORDERED AND AGREED this _____ day of _____, 2017.

BY: _____

Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

The Settling Parties to the Settlement Agreement, as set forth in Appendix A, as amended, (“Settling Parties”) consent to enter into this Amendment No. 2 and to be bound by its terms. The signatory identified below certifies that he is fully authorized to agree to the terms and conditions of this Amendment No. 2 on behalf of those Settling Parties and to bind those Settling Parties to all of the terms and conditions of this Amendment No. 2.

By:

William H. Hyatt, Jr., Esq.
As Liaison Counsel

Date